

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

DOMENICK JAMES HOWARD,

Plaintiff,

vs.

MICHELLE JENIKE, LYODD DOPP,  
BRIAN FISHER, and CHAD  
LAWRENCE,

Defendants.

CV-17-00088-GF-BMM-JTJ

FINDINGS AND RECOMMENDATIONS  
OF UNITED STATES MAGISTRATE  
JUDGE

Plaintiff Domenick Howard filed a Complaint pursuant to 42 U.S.C. § 1983 alleging Defendants violated his constitutional rights. On February 8, 2018, this Court issued an Order finding that Mr. Howard failed to set forth sufficient factual allegations to state a federal claim against any of the named Defendants and the Complaint was subject to dismissal. Mr. Howard was given an opportunity to file an amended complaint on or before March 2, 2018. (Doc. 8.) He failed to do so.

The Court noted in its Order that according to the Federal Bureau of Prisons' website Mr. Howard was incarcerated at the United States Penitentiary in Marion, Illinois but he had not updated his address with the Court. The Clerk of Court was directed to serve a copy of the February 8, 2018 Order upon Mr.

Howard at USP Marion. Mr. Howard was advised that if he failed to file a Notice of Change of Address on or before March 9, 2018 this matter would be recommended for dismissal pursuant to Local Rule 5.2. He has not done so.

Accordingly, the Court issues the following:

### **RECOMMENDATIONS**

1. This matter should be DISMISSED for failure to state a federal claim and pursuant to Local Rule 5.2.
2. The Clerk of Court should be directed to close this matter and enter judgment in favor of Defendants pursuant to Rule 58 of the Federal Rules of Civil Procedure.
3. The Clerk of Court should be directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit. The record makes plain the Complaint lacks arguable substance in law or fact.
4. The Clerk of Court should be directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Mr. Howard failed to state a claim upon which relief may be granted.
5. The Clerk of Court shall serve a copy of this Order on Mr. Howard at his

address listed on the docket and at USP Marion.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS &  
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

Mr. Howard may file objections to these Findings and Recommendations within fourteen (14) days after service (mailing) hereof.<sup>1</sup> 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 9th day of April, 2018.

/s/ John Johnston

John Johnston  
United States Magistrate Judge

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<sup>1</sup>Rule 6(d) of the Federal Rules of Civil Procedure provides that “[w]hen a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail) . . . 3 days are added after the period would otherwise expire under Rule 6(a).” Therefore, since Mr. Howard is being served by mail, he is entitled an additional three (3) days after the period would otherwise expire.